RECENT IMPORTANT DECISIONS.

ACCIDENT INSURANCE—ACCIDENT OR DISEASE.—Plaintiff held the usual accident policy calling for liability on the part of the insurer for death, resulting from bodily injury, external, violent and accidental, independent of all other causes. A few months prior to his death, insured had had appendicitis, a reattack of which, brought on by a strain, caused his death. An operation revealed the fact that the appendix had continued in an abnormal condition. In an action on the policy, *Held,* that death was not caused by an accident, independent of all other causes. *Stanton* v. *Traveler's Ins. Co.* (1910), — Conn. —, 78 Atl. 317.

This decision would seem to be a logical interpretation of the unequivocal terms of these policies. Death due not to accident alone, but to both accident and disease, is not covered by them. 1 CYC. 262. See 9 MICH. L. REV. 362.

ANTENUPTIAL CONTRACT—WAIVER OF PERFORMANCE.—Appellee entered into an antenuptial contract, binding the husband to support and properly educate her minor daughter. Immediately after the marriage the daughter, then about twelve years of age, was sent out to work for a living under conditions making it impossible for her to attend school. The circumstances under which the daughter was sent out were such that a waiver of performance of the contract by the wife may be properly inferred. *Held,* that proof of waiver of performance of an agreement does not justify a finding of performance thereof, and that upon the husband's death the wife may claim her rights as heir. *Warner v. Warner* (1910), — Cal. —, 111 Pac. 352.

Either party may waive any part of a contract, either expressly or by acts or declarations indicating a relinquishment of any provision or part of a provision, but to constitute a waiver of the performance of a condition the acts relied upon must, as a rule, be inconsistent with an intention to insist upon performance. 9 CYC. 646 et seq. A party cannot allege performance and then prove facts in excuse of performance. *Fauble & Smith* v. *Davis,* 48 Iowa 462; *Higgins* v. *Lee,* 16 Ill. 495. An agreement of this nature is subject to the rule which governs all simple contracts with regard to consideration and the consideration for the promise of each party is the abandonment by the other of his rights under the contract. ANSON, CONTRACTS, p. 258. doned by both parties, the widow may demand dower even from a purchaser. Since in the principal case the rights under the antenuptial contract were aban- *Spiva* v. *Jeter,* 9 Rich. Eq. 434. The provisions in an antenuptial agreement which tend to bar the widow of dower will not be enforced unless the contract be fully executed in good faith by the husband. *Johnson* v. *Johnson's Adm'r,* 30 Mo. 72, 77 Am. Dec. 598.

BANKRUPTCY—ARREST OF BANKRUPT—EXEMPTION FROM ARREST.—One Turgeon was arrested and held in jail by the sheriff of the county upon a process issued on execution upon a debt provable and dischargeable in bankruptcy.

Arrest was made July 16, 1910, and Turgeon was adjudicated a bankrupt July 18, 1910. Application was then made by him for a writ of habeas corpus for discharge from arrest. *Held,* that the application should be granted. *Turgeon* v. *Emery* (1910), — D. C. D. Maine —, 182 Fed. 1016.

The principal question in the case arose in regard to the meaning of the term "arrest" as employed in § 9 of the Bankruptcy Act of 1898. That section provides that, "a bankrupt shall be exempt from arrest upon civil process," with certain exceptions not applicable to this case. The court declared this to mean not only that the bankrupt shall not be taken into custody, but also that he shall not be detained in custody after he becomes a bankrupt, believing this to be in keeping with the spirit and meaning of the bankrupt law. In a former decision it was held that the bankrupt was not to be exempt if arrested before filing his petition. *In re Claiborne,* 109 Fed. 74, 5 Am. B. R. 812. This view is supported on the ground that arrest means the first apprehension, not continued detention, that only the bankrupt is to be exempt and not the debtor, consequently proceedings in bankruptcy must be instituted before the first act of apprehension; see LOVELAND, BANKRUPTCY, p. 658. Cases decided under the Bankruptcy Act of 1867 adhered to this view but that act provided for exemption from arrest "during the pendency of proceedings in bankruptcy." Act of 1867, § 26. The doctrine of the Claiborne case was denied in *People etc.* v. *Erlanger,* 132 Fed. 883, 13 Am. B. R. 197, which is the case relied upon for its holding by the court in the principal case. If "arrest" can be held to apply to the continued detention, undoubtedly the court in the principal case is correct. That an arrest is taking or a detaining of the person see *United States* v. *Benner,* Fed. Cas. 14, 568, 24 Fed. Cas. 1084; *Rhodes* v. *Walsh,* 55 Minn. 542, 57 N. W. 212.

BANKRUPTCY—EFFECT UPON A SURETY OF BANKRUPT'S DISCHARGE.—An attachment suit in a justice's court was decided in favor of the plaintiff in that suit. The defendant appealed giving the usual statutory appeal bond with sureties. While the appeal was pending the defendant was adjudged a bankrupt and received his discharge. The defendant then interposed an amended plea in the attachment suit giving notice of his discharge in bankruptcy. From an order discharging the surety on the appeal bond because of the principal's discharge in bankruptcy, an appeal was taken. *Held,* that the surety was not discharged from his obligation on the bond. *Brown Coal Co.* v. *Antezak* (1910), — Mich. —, 128 N. W. 774.

The question of the liability of a surety upon an appeal bond, the appeal being decided adversely to the principal, but pending which the principal has been discharged in bankruptcy from the liability sued upon, has long been a vexed one among the various courts in this country. Section 16 of the Bankruptcy Act of 1898 provides that, "the liability of a * * * surety for a bankrupt shall not be altered by the discharge of such bankrupt." A similar provision was contained in the Act of 1867. It is because of these provisions that much of the difficulty has arisen. The New York courts hold that the surety is not discharged as the condition of the bond on appeal is, that if the judgment of the lower court is affirmed, the obligation of the bond becomes